



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

ELP  
Docket No. 1791-00  
19 January 2001

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C.1552  
(b) NAVADMIN 126/97

Encl: (1) DD Form 149 w/attachments  
(2) Case Summary  
(3) Subject's Naval Record w/DD Form 214

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy, applied to this Board requesting, in effect, that the record be corrected to show that on 3 October 1997 he was transferred to the Fleet Reserve under the Temporary Early Retirement Authority (TERA) vice being discharged on that date.

2. The Board, consisting of Messrs. Morgan, Caron and Ms. Madison reviewed Petitioner's allegations of error and injustice on 10 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application to the Board was filed in a timely manner.

c. Petitioner reenlisted in the Navy on 14 January 1994 as an AME2 (E-5). At the time of his reenlistment, he had nearly 14 years of prior active service.

d. Petitioner's enlisted performance evaluation report for the period 1 September 1993 to 31 March 1994 states that he failed to meet Navy physical readiness standards and was placed on a remedial program to correct his condition. At the time, his body fat was measured at 27 percent. His enlisted performance evaluation for the period ending on 31 March 1995 showed that he had made improvement and was within standards.

e. On 30 April 1996, the medical record reflects Petitioner underwent a radiological examination for "status post chronic patellofemoral pain." The radiologist's impression indicated there were mild "degenerative changes in the knees, and questionable loose body of the right knee versus osteophyte."

f. On 18 July 1996, Petitioner reported to the medical clinic for a physical readiness test (PRT) waiver due to being on six-months of limited duty for treatment of gout. It was noted that he was currently in an obesity program and any sudden loss in weight could aggravate the gout.

g. On 22 August 1996 Petitioner requested to see a psychiatrist due to the stress of being a single parent and trying to raise four children by himself. He had a five-year old who had a learning disability, his older boy had legal problems, and his eldest daughter was pregnant. He reported difficulty in remembering things and was afraid he would make a mistake that might lead to a pilot's injury. It was noted that he had been taking medications, intermittently, which could cause drowsiness or confusion. He was diagnosed as having an adjustment disorder with anxiety.

h. On follow-up on 16 September 1996, the examining psychiatrist noted that Petitioner's stress was now minimal since his daughter's baby had been born. It was also noted he was being considered for administrative separation due to body fat, but was trying to get this waived by a medical board since it was recently determined that he also had gout in his right hand. The psychiatrist opined that he no longer manifested an adjustment disorder or any other type of disorder.

i. The medical record reflects that on 16 January 1997 Petitioner was seen for complaints of increased anxiety and problems with concentration. It was noted that a medical board was pending for arthritis. The psychiatrist believed that contributing factors to the anxiety were Petitioner's concern about his career, domestic problems, and difficulty in maintaining weight standards. It was recommended that if Petitioner was retained he be considered for overeaters inpatient treatment to help him achieve Navy weight standards.

j. An Evaluation Report and Counseling Record for the period ending 15 March 1997 stated that Petitioner had again failed to meet Navy physical readiness standards and body fat requirements. It noted he had been counseled repeatedly for personal indebtedness and related problems. He was assigned an adverse mark of 1.0 in military bearing/character and was not recommended for retention.

k. On 20 March 1997, a physical evaluation board found Petitioner fit to perform his duties. On the same date, Petitioner submitted a special request to stay in the Navy until his projected rotation date. However, the chain of command denied his request due to his failure to make any progress on body fat standards in three years. The commanding officer (CO) stated that a "medical board found him fit for duty and now on limited duty. Cannot transfer to fleet, and shows limited to no value to fleet. No option that I am aware of..."

l. On 17 June 1997, Petitioner submitted a special request for early retirement due to the Navy's downsizing. His request was disapproved by the chain of command because he was ineligible to apply pursuant to reference (b). A formal request for retirement under the TERA was not submitted to the Chief of Naval Personnel.

m. On 5 August 1997, Petitioner underwent a right knee arthroscopy and chondroplasty of the trochlea.

n. The Evaluation Report and Counseling Record for the period from 15 March 1997 until Petitioner's administrative discharge cited his continued failure to meet Navy body fat requirements and multiple physical readiness test failures. He was not recommended for reenlistment. Petitioner was honorably discharged by reason of weight control failure on 3 October 1997. The discharge processing documentation is not on file in

the record. His DD Form 214 indicates he had more than 17 years of active service when discharged.

o. A Department of Veterans Affairs rating decision on 26 July 1999 granted Petitioner a combined service-connected rating of 40 percent for retropatella pain syndrome and mild degenerative changes of both knees, a status post avulsion fracture of right foot with degenerative joint disease in the right ankle and talonavicular joint, a lumbosacral strain with minimal degenerative change of the lumbosacral spine (20%); gouty arthritis with multiple joint involvement (20%); and acne (10%).

p. Reference (b) notified commands that applications for TERA retirement for Fiscal Year 1998 would be accepted until 31 July 1997. Priority approval would be given to those Sailors requesting a retirement date of 31 October 1997. To be eligible, individuals had to be recommended for retention, have at least 15 years of active service, and be in one of the ratings listed in reference (b). Petitioner's rating, AME, was not one of those ratings listed.

q. The Uniform Retired Date Act and applicable directives require that all transfers to the Fleet Reserve take place on the first day of the month.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants favorable action. In this regard, the Board notes that with the exception of his weight problems and his declining performance during the last 18 months of service, Petitioner had an excellent overall record of service free of any disciplinary actions. It is clear to the Board that Petitioner's ability to lose weight was aggravated by significant knee problems, arthritis and gout. These medical factors also affected his declining performance, along with his domestic situation, to include being the custodial parent of four children, one with a learning disability, one with legal problems, and another who was pregnant. It appeared to Board he could have been sent to "overeaters" inpatient treatment at that time he was apparently on limited duty but was not. The Board believes that little sensitivity was shown by his command for these mitigating factors when it denied his request for retirement under TERA. The Board further believes that had his request been forwarded

to the Chief of Naval Personnel with a strong recommendation for approval, it would have been granted despite the fact his rating was not one of those listed in reference (b). The Board accordingly concludes that it would be unjust to deny him early retirement when he served the Navy and his country well for more than 17 years. Therefore, given the provisions of the Uniform Retired Date Act as implemented by the governing regulations, the Board concludes that that it would be appropriate and just to correct the record to show he was transferred to the Fleet Reserve under TERA, effective 1 November 1997.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not discharged on 3 October 1997 but continued to serve on active duty until he was released from active duty on 31 October 1997 and transferred to the Fleet Reserve under TERA, effective 1 November 1997.

b. That a copy of the Report of Proceedings be filed in Petitioner's naval record.

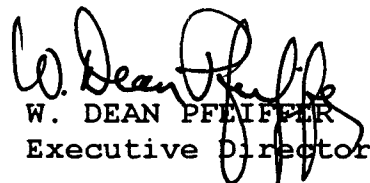
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



ALAN E. GOLDSMITH  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6 (e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6 (e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director